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ACTION MEMO

DepSec Action

D USD(P)

5/17/19

16 MAY 2019

FOR: ACTING SECRETARY OF DEFENSE

FROM: Kenneth P. Rapuano, Assistant Secretary of Defense, Homeland Defense & Global Security

*Kenneth P. Rapuano*

MAY 16 2019

SUBJECT: Acting Secretary of Defense Approval of Border Security Support to Department of Homeland Security

**PURPOSE:** This memo will document your decisions to approve Department of Homeland Security (DHS) requests to: 1) fill shortfalls in support of Customs and Border Protection's (CBP's) Operation Guardian Support (OGS); 2) provide additional military personnel to operate mobile surveillance camera (MSC) vehicles; and 3)

**COORDINATION:** Policy coordinated this memo with OGC and OUSD(C)/CFO.

**BLUF:** Approving the recommendations below and signing the response memo (TAB A) will respond to DHS's requests to enhance border security, document your decisions, and direct the Joint Staff to source the requirements.

**DISCUSSION:**

- On May 11, 2019, you verbally approved DHS requests to backfill requirements to support CBP's OGS, to provide military personnel to staff nine additional MSC vehicles, and to

**OGS:**

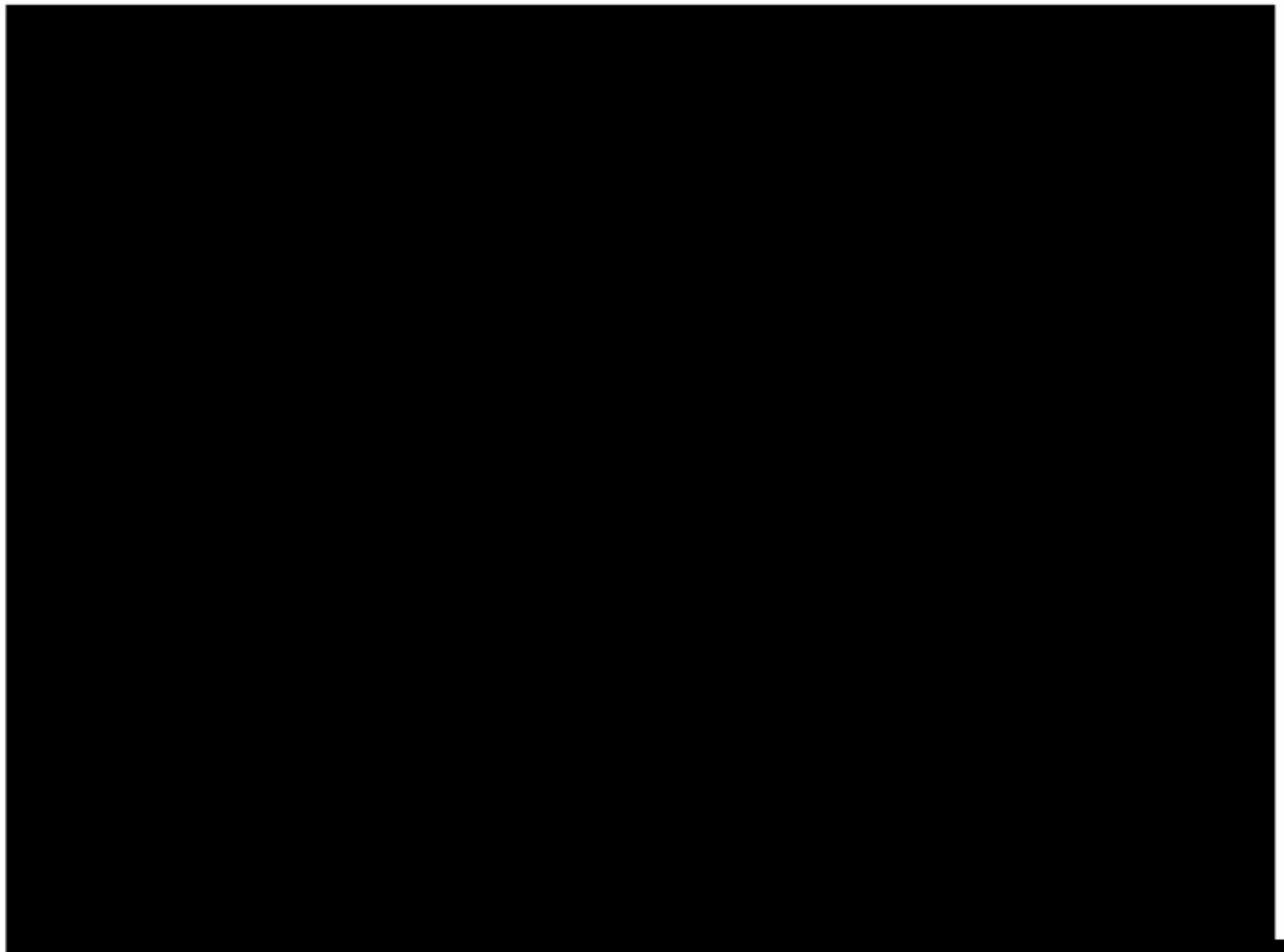
- Since April 7, 2018, DoD has sourced support for CBP OGS with National Guard personnel, many of whom volunteered and who were ordered by the Governors concerned to perform duty under 32 U.S.C. § 502(f).
- Due to a shortfall in volunteer National Guard personnel, DoD has been unable to source all requirements identified by CBP for the remainder of fiscal year (FY) 2019.
- U.S. Northern Command (USNORTHCOM) assessed the shortfall identified by the National Guard Bureau (NGB) and determined that approximately 900 military personnel and approximately 14 aircraft to conduct aerial detection and monitoring would be necessary to fulfill these validated CBP requirements (TAB B).

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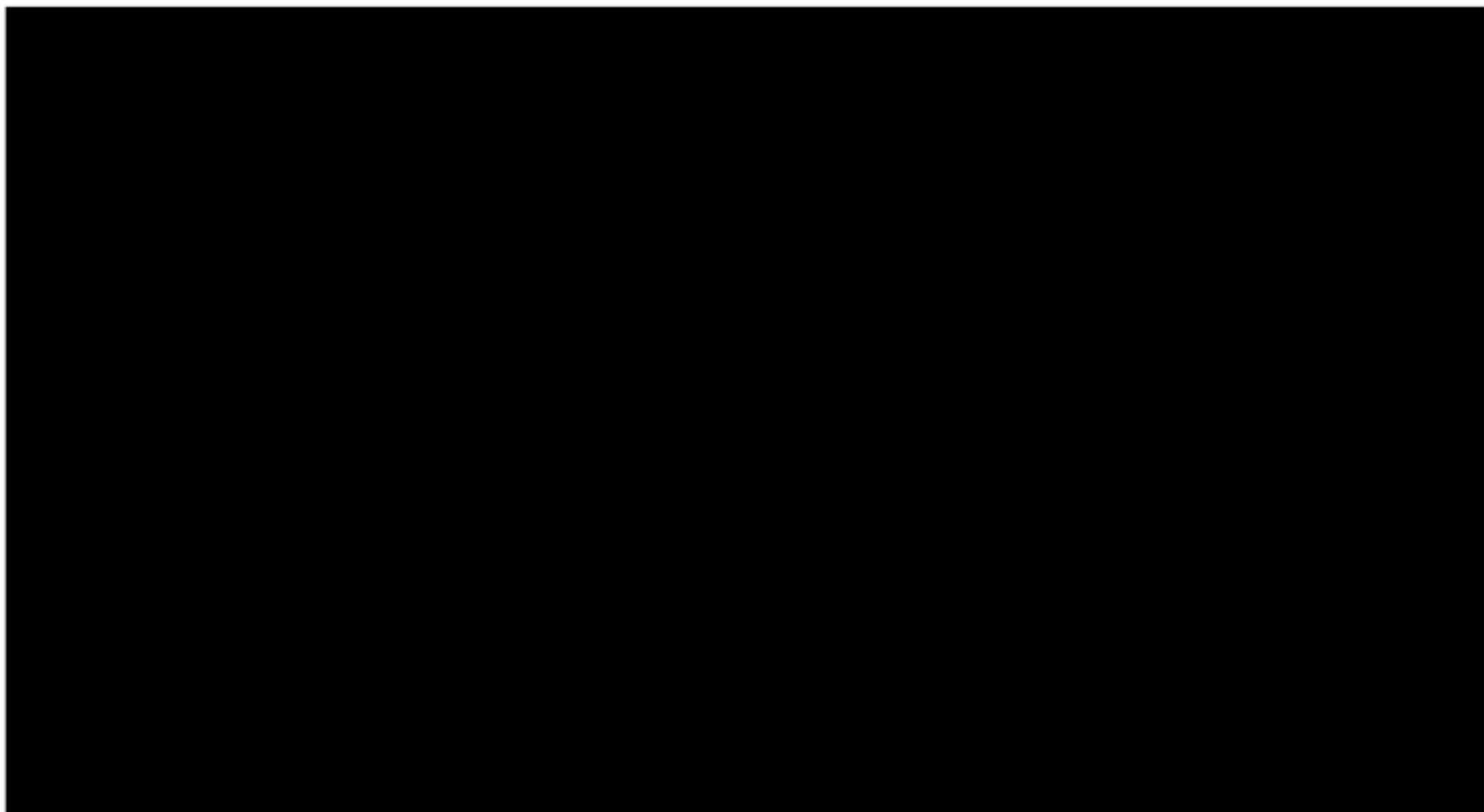
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**MSCs**

- On January 11, 2019, you approved the employment of DoD personnel to operate 146 MSC vehicles across 9 Border Patrol Sectors in the 4 southwestern States (TAB C).
- On May 3, 2019, DHS requested to increase the number of MSC vehicles staffed by DoD personnel from 146 to 155 (TAB D).
- Support will be provided on a non-reimbursable basis to the greatest extent legally permissible, including pursuant to Chapter 15 of Title 10, U.S. Code, and Section 1059 of the National Defense Authorization Act for Fiscal Year 2016 (P.L 114-92). To the extent that the support provided by military personnel is determined to be reimbursable, your memorialization of your May 11, 2019, decision by signing below also serves to waive reimbursement, to the extent permissible, pursuant to Section 277(c) of Title 10, U.S. Code.
- USNORTHCOM is determining whether or not the additional MSCs can be staffed with personnel already deployed in support of this mission. If additional personnel are required, USNORTHCOM will submit a request for forces to the Joint Staff.



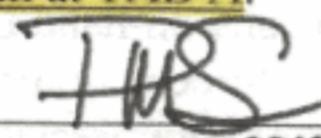
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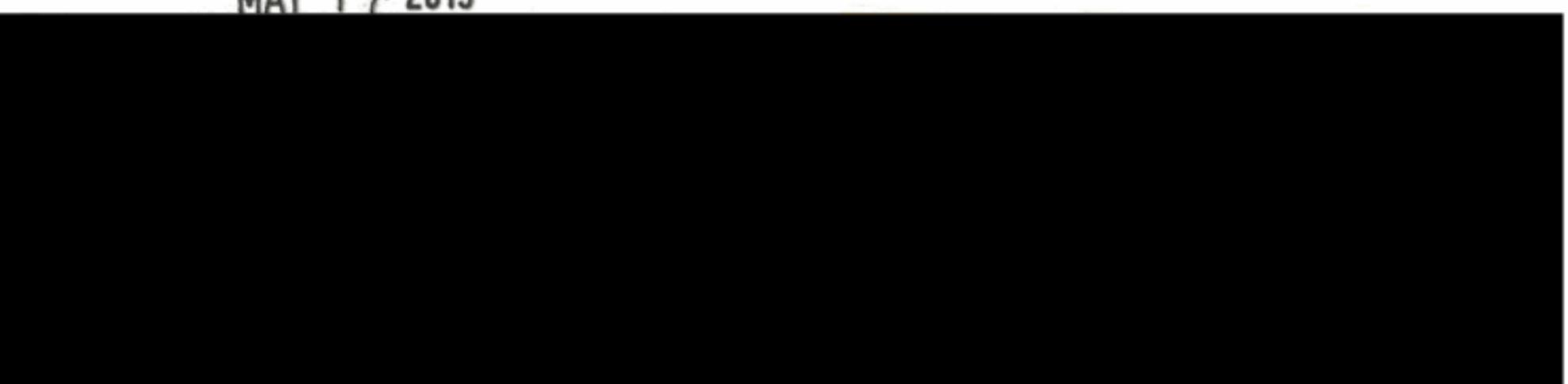


**RECOMMENDATION 1 (OGS):** Direct the Joint Staff to source up to 900 military personnel and 14 aircraft required to meet the CBP OGS shortfall through FY2019 and authorize the Executive Secretary to sign the response memorandum at TAB A.

Approve:  Disapprove: \_\_\_\_\_ Other: \_\_\_\_\_  
MAY 17 2019

**RECOMMENDATION 2 (MSCs):** (1) Approve an increase in DoD support to CBP's MSC mission on a non-reimbursable basis through September 30, 2019; (2) waive reimbursement under 10 U.S.C. § 277(c); and (3) authorize the Executive Secretary to sign the response memorandum at TAB A.

Approve:  Disapprove: \_\_\_\_\_ Other: \_\_\_\_\_  
MAY 17 2019



COORDINATION: TAB F

Attachments:  
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**OFFICE OF THE SECRETARY OF DEFENSE**  
1000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1000

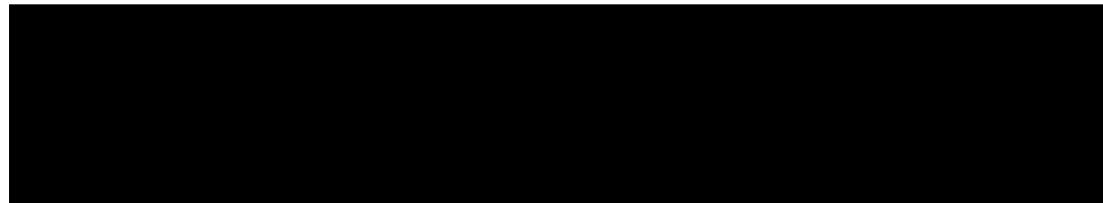
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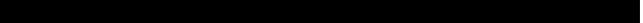
**MEMORANDUM FOR EXECUTIVE SECRETARY, DEPARTMENT OF HOMELAND SECURITY**

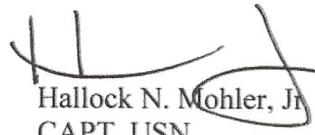
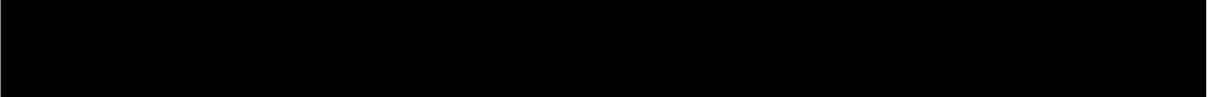
**SUBJECT:** Department of Defense Support to the Department of Homeland Security to Enhance Security at the U.S. Southern Border

Thank you for your recent memorandums requesting Department of Defense (DoD) support to enhance security at the U.S. Southern Border. The Acting Secretary of Defense has reviewed your requests and has approved the following support:

- The use of additional ground support and aviation resources to support Customs and Border Protection (CBP) Operation Guardian Support (OGS) requirements. Title 10 personnel are barred from undertaking civilian law enforcement functions, consistent with the Posse Comitatus Act and section 275 of title 10, U.S. Code. All previously stated restrictions governing the employment of DoD personnel in support of CBP OGS remain.
- An increase in the number of personnel previously approved to operate mobile surveillance camera vehicles from 146 to 155. All other caveats of the position description included in the previous RFA, approved January 11, 2019, remain in effect.



This support will be provided on a non-reimbursable basis to the greatest extent legally permissible, through September 30, 2019. 



Hallock N. Mohler, Jr.  
CAPT, USN  
Executive Secretary

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ACTION MEMO

JAN 11 2019

DUSD(P) Do

FOR: ACTING SECRETARY OF DEFENSE

FROM: Kenneth P. Rapuano, Assistant Secretary of Defense, Homeland Defense & Global Security

SUBJECT: DoD Support to U. S. Customs and Border Protection Border Security Mission

**PURPOSE:** To request your approval of additional DoD support to the Department of Homeland Security (DHS) southern border security mission through September 30, 2019, and to authorize the Executive Secretary to sign the response memorandum to DHS at TAB A.



**COORDINATION:** This action was coordinated with USD(C)/CFO, OGC, and the Joint Staff.

**BLUF:** Approving this request would provide up to 4,600 additional military personnel to support DHS/Customs and Border Protection (CBP) to enhance security along the southern border. This request for assistance is in addition to the support previously approved by then-Secretary Mattis for CBP's Operation Guardian Support (OGS) and CBP's Operation Secure Line response to the migrant caravans.

**DISCUSSION:** On April 4, 2018, the President directed the Secretary of Defense to support the Department of Homeland Security in securing the southern border, and to take other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country (TAB B).

- On December 27, 2018, DHS requested additional DoD support to CBP (TAB C).
  - DHS is requesting deployment of DoD personnel to operate 146 mobile surveillance camera (MSC) vehicles across nine Border Patrol Sectors in the four southwestern States. DoD personnel manning these surveillance systems will enhance situational awareness, and enable Border Patrol agents to respond more effectively to potential illicit traffic.
  - DHS is also requesting the emplacement of an additional 167.4 miles of concertina wire over existing pedestrian border barriers at locations designated by CBP in California and Arizona. Emplacement of additional concertina wire will strengthen existing barriers, making them more difficult to scale, thereby providing an opportunity for law enforcement personnel to mount a more effective response.

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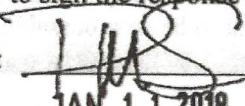
- If approved, these requirements will be addressed as quickly as available forces and assets are identified, and as CBP confirms its readiness to receive the requested assistance; remaining DoD support will continue through September 30, 2019.
  - Your approval of the additional support requested by DHS is consistent with, and in compliance with, direction in the President's April 4, 2018, memorandum.
  - Support will be provided on a non-reimbursable basis to the greatest extent legally possible, including pursuant to Chapter 15 of title 10, U. S. Code, and Section 1059 of the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-92). To the extent that the support provided by military personnel is determined to be reimbursable, your approval by signing below also serves to waive reimbursement, to the extent permissible, pursuant to section 277(c) of title 10, U. S. Code.
  - OUSD(C)/CFO provided an initial cost estimate assuming a force size of 3,000 personnel in title 10 status of \$91 million from January 2019 to September 2019.
    - OUSD(C) will refine this estimate based on the operational assumptions finalized by the Joint Staff, USNORTHCOM, and the Services.
    - OUSD(C) is reviewing accounts to fund this mission with minimal disruption to DoD and to minimize congressional concerns.
  - DoD engineering support will conclude upon emplacement of the requested concertina wire. DoD will not remove emplaced concertina wire; CBP is responsible for its final disposition.
  - DoD, in consultation with DHS, will evaluate DoD support to the MSC operator mission no later than April 30, 2019, and may adjust the level of support based on the ongoing border security threat conditions.
- DoD and National Guard personnel will not participate in law enforcement activities, be assigned responsibilities that require direct contact with migrants, or be assigned missions that require them to be armed.
  - Decisions regarding arming military personnel for self-defense purposes, and related rules for the use of force, will be informed by mission requirements.
  - DoD personnel operating MSC systems will comply with restrictions and guidance in DoDI 3025.21, Defense Support of Civilian Law Enforcement Agencies, regarding participation by DoD forces in support of civilian law enforcement activities.
- CBP has also requested the full execution of the previously approved FY 2019 OGS aviation requirements using a mix of rotary-wing, fixed-wing, and unmanned aviation platforms (TAB D).

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- The National Guard Bureau (NGB) anticipates additional aviation assets will be available after January 2019, upon completion of scheduled aviation maintenance cycles.
- The Chief, NGB, will evaluate sourcing alternatives, and provide a recommendation to the CJCS that meets the level of aviation support approved for the remaining three quarters of FY 2019.
- CJCS suggests not approving the DHS request until a determination is made on the National Emergency Declaration.

**RECOMMENDATIONS:** (1) Approve DoD support to DHS/CBP through September 30, 2019, (2) waive reimbursement under 10 U.S.C. § 277(c), and, (3) authorize the Executive Secretary to sign the response letter at TAB A.

Approve:  Disapprove: \_\_\_\_\_ Other: \_\_\_\_\_  
JAN 11 2018

COORDINATION: TAB E

Attachments:  
As stated

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OFFICE OF THE SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1000

1/11/2019

MEMORANDUM FOR EXECUTIVE SECRETARY, DEPARTMENT OF HOMELAND SECURITY

SUBJECT: Request for Department of Defense Support of U.S. Customs and Border Protection's Border Security Mission

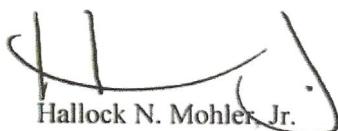
Thank you for your December 27, 2018 letter requesting additional Department of Defense assistance in support of the U.S. Customs and Border Protection's (CBP) border security mission. I am responding on behalf of Acting Secretary Shanahan.

The Acting Secretary has reviewed and approved your request for mobile surveillance camera operators and engineering support to emplace additional concertina wire at locations where the Department of Homeland Security provides access to DoD personnel and for which the Department of Homeland Security has addressed any environmental compliance requirements. DoD will work with CBP to establish priority locations for sourcing of DoD personnel and equipment. The concertina wire will be of no value to DoD following its emplacement, and so will be left in place. CBP will be responsible for the final disposition of all concertina wire emplaced by DoD. This support is approved on a non-reimbursable basis, to the greatest extent legally possible, through September 30, 2019.

The Acting Secretary continues to support your request for aviation assets and hours under the current Operation Guardian Support guidelines.

Neither DoD personnel nor National Guard personnel will conduct law enforcement activities, be assigned responsibilities that require direct contact with migrants, or be assigned missions that require them to be armed. Decisions regarding the arming military personnel for self-defense purposes, and related rules for the use of force, will be informed by mission requirements.

The Acting Secretary appreciates the opportunity to support the Department of Homeland Security's mission of securing and managing the Nation's southern border.



Hallock N. Mohler Jr.  
CAPT, USN  
Executive Secretary